



## **Office of Local Programs**

**Process Review 96-01**

**PS &E**

**FHWA Required Contract Provisions**

**and**

**Method of Construction**

# **FINAL REPORT**

Recommended Approval

Original Signed by John Garlock  
Chief, Procedures Development Branch

Approved

Original Signed by Alan P. Glen  
Assistant Program Manager  
Design and Local Programs

Date: July 11, 1997

## **Executive Summary**

Process Review 96-01 entailed a check of all local agencies PS&E packages to make sure that local agencies have physically incorporated the Form FHWA-1273 and other selected Federal contract provisions into their Federal-aid contract. The review was conducted between December 1, 1996 and February 28, 1997.

Also, the review included a check on the local agencies having the self-approval documentation and certification to perform all or part of the construction of the Federal-aid project using their own personnel. Documentation and certification is required by LPP 95-07, Attachment 7, Section 9, Force Account - Day Labor.

With the reengineering of the Local Assistance program, local agencies must now certify that they have complied with all the Federal rules and regulations that are required for the project development and construction phases.

The review was conducted during the winter, the slow period for PS&E packages to be sent to the districts, to not delay the processing of local agency projects. This was the first process review to be conducted by Caltrans Office of Local Programs. The review was originally scheduled to only last for two months, but, because of a lower number of PS&Es being surveyed (partially due to the January 1997 Storms), the survey period was extended one additional month.

Close to 25% of the PS&E packages left out all or some of the federally required contract provisions. What this means is about one in four local agency projects, if audited, may have lost all or part of the Federal funding for their project if this process review had not caught the deficiencies.

The survey also found that local agencies, who planned to do all or part of the work with their own forces, had self-approval documentation and certification as required.

Considering the results of the survey, six recommendations are presented in this report. In summary these six recommendations are:

- Issue an LPP that will have a “boiler plate” of all the Federal-aid contract provisions, an expanded checklist, and instructions for completing the checklist.
- Expand upon the flowcharts and checklists now in LPP 95-07 in the soon to be published Local Assistance Procedures Manual.
- Districts continue to spot-check PS&E packages for Form FHWA-1273 and other selected Federal contract provisions.
- Repeat this process review again next year to check to see if the new procedures are working to correct the deficiency rate.
- The Districts should take an active role in advertising the new ITS Project Development course when it is available.
- District and headquarters Local Assistance personnel, involved with Federal-aid project authorization, should attend FHWA’s Contract Administration Core Curriculum course if they had not attended the course in the last three years.

## **PS&E**

### **A. BACKGROUND**

Prior to Reengineering of the Local Assistance program, District Local Assistance Offices (DLAOs) reviewed local agencies PS&E packages prior to authorizing the projects for construction. One of the things they checked was to make sure that local agencies included the required Federal-aid contract provisions. With reengineering and the issuance of

LPP 95-07 “Reengineering”, DLAOs no longer are required to review local agencies PS&E packages. Instead, the responsibility for making sure the required Federal-aid contract provisions is included has been delegated to the local agencies. To ensure that local agencies are including the required Federal contract special provisions, local agencies are now required to submit a PS&E certification checklist, along with the PS&E package, when they submit their “Request for Authorization” for construction.

The Form FHWA-1273, “Required Contract Provisions”, is a convenient collection of contract provisions and proposal notices that are required by regulations promulgated by FHWA and other Federal agencies. Most of the provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into, all contracts. Part of the PS&E certification is the specification checklist. Included on the checklist is the Form FHWA-1273 and other selected Federal contract provisions. Even with PS&E certification, several local agency projects have been awarded, or come close to being awarded, without containing the Form FHWA-1273 and other Federal-aid contract provisions. Failure to include the Form FHWA-1273 and other Federal-aid required contract provisions is a major deficiency and can result in the loss of Federal funds for that project.

Prior to reengineering of the Local Assistance procedures, local agencies had to submit requests for force account - day labor to the DLAOs for processing and approval by OLP Area Engineers. With reengineering, the local agencies have been delegated the approval authority for force account - day labor under the guidelines established in LPP 95-07.

### **B. PURPOSE AND OBJECTIVES OF REVIEW**

The purpose of this review was to make sure that the local agencies have physically incorporated the Form FHWA-1273 and other selected Federal-aid contract provisions into their Federal-aid contract.

Also, the review included a check on the local agencies having the self-approval documentation and certification required for the local agency to perform part or all of the construction using their own personnel. Self-approval documentation and certification are required by LPP 95-07, Attachment 7, Section 9, Force Account - Day Labor.

The objective of the review was to see how local agencies are doing with their new responsibility to certify their PS&Es and Method of Construction. In addition, determine if there are any areas in the OLP procedures that might need further clarification or need to be expanded.

### **C. REVIEW APPROACH**

During a three month period, December 1, 1996 to February 28, 1997, the local agencies Request for Authorizations (for construction) and PS&E packages were spot-checked for Form FHWA-1273 and other selected Federal contract provisions. The Method of Construction certifications were also spot-checked by having local agencies submit their certification as back-up information for their request for authorization and PS&E certification. DLAOs were required to fill out a survey form based on their review of the local agency's PS&E package and certification. DLAOs were required to submit only one survey form, without any deficiencies, per each local agency during the review period. It was reasoned that if a local agency had one complete package, all of their other PS&E packages should be complete package. In some cases, the Districts had to review more than one PS&E package to find one without deficiencies.

The OLP Area Engineers did not process "Requests for Authorization" for a local agency until they received a survey form without any deficiencies. Upon receipt of the survey form, the OLP Area Engineer reviewed the form for completeness, then forward the form to the Process Review Engineer for input into the database. When deficiencies were found, the PS&E was returned to the local agency to correct the deficiencies. The DLAOs submitted the survey forms, with deficiencies, directly to the Process Review Engineer for input into the database. The DLAOs continued to review other PS&Es submitted by those local agencies, with deficiencies, (during the review period) until satisfactory PS&Es were received.

Follow-up phone calls were made to those local agencies whose PS&E package lacked some or all of the required Federal-aid contract provisions. The purpose of the calls were to get their perception on why they did not include the required provisions and if they had any recommendations to improve Local Assistance procedures.

### **D. FINDINGS, OBSERVATIONS and RECOMMENDATIONS**

#### **FINDING 1.**

Just under 25% of those PS&E packages that were reviewed did not contain one, several, or all the required Federal-aid contract provisions. A spreadsheet is attached showing the local agencies that were reviewed and the survey results. Also attached is a copy of the survey review form. For statewide, 45 PS&E packages were reviewed and 11 were found missing either one, several, or all the required Federal-aid contract provisions. Listed below is a breakdown of the provisions that were checked as part of the survey and the number of local agencies that did not include those provisions.

<b>Provisions</b>	<b>Number that did not include the Provision</b>
Form FHWA-1273	4
Noncollusion Certification	3
Lobbying Certification	5
Debarment Certification	5
Liquidated Damages	3
Buy America Requirements	6
Federal Wage Rates	9
DBE Specifications & Goals	5

Note that these are not all the required Federal-aid contract provisions. For a complete listing of the required provisions, refer to LPP 95-07 “Reengineering” or FHWA’s “Contract Administration Core Curriculum”.

Near the end of the review period, LPP 97-01, “Federal Wage Rates Availability”, was issued to provide local agencies free of charge, via OLP’s Internet website, Federal Wage Rates. Before, most local agencies used to obtain hard copies of the wage rates from the DLAOs. A few obtain the wage rates from the Federal Register or through a user fee supported service. The old cumbersome processes for obtaining Federal wage rates was the reason given by local agencies, during the follow-up interviews, for not including wage rates in their PS&E packages.

The Office of Local Programs will be issuing an LPP that will have a “boiler plate” of all Federal-aid contract provisions. The LPP will provide an electronic version of the Federal-aid contract provisions. Local agencies will then be able to insert the provisions into their contract along with the other contract provisions that are in an electronic format. The old method was to have paper copies on file, from old contracts, to use in their next contract. Having an up-to-date electronic version, “boiler plate,” of the required provisions was one of the main recommendations of those local agencies contacted as part of the follow-up.

Another recommendation, that came out of the follow-ups, was for more checklists and flow-charts. The local agencies found the checklists and flow-charts in LPP 95-07, and the other LPPs, helpful and useful and would like to see more of them. The “boiler plate” LPP will include a checklist and instructions to ensure that the Local Agencies include all the required Federal contract provisions.

**OBSERVATION 1:**

With the issuance of the Federal wage rate LPP, and the issuance of the “boiler plate” LPP and Local Assistance Procedures Manual later this year, local agencies should have the tools required to put their PS&E packages together to conform to Federal regulations.

**RECOMMENDATION 1:**

- Issue the “boiler plate” LPP with all the Federal-aid contract provisions, an expanded checklist and instructions for completing the checklist.

- Expand upon the flowcharts and checklists now in LPP 95-07, in the soon to be published Local Assistance Procedures Manual.

**FINDING 2.**

Some districts have continued to spot-check PS&E packages when they are submitted with the “Request for Authorization” for construction, especially for the small agencies that do not do Federal-aid projects on a regular basis. Most of the small local agencies that were contacted, as part of the follow-up, said they still need to rely on Caltrans to help them with all the Federal requirements since they only do about one Federal-aid project a year. They also said that to try to read through all the procedures can be overwhelming (the first time through or even going back to review for one project a year).

**OBSERVATION 2:**

Ongoing spot-checking of PS&Es, being done by some districts, seems to reduce the number of local agencies not including the required Federal contract provisions. This is reflected in the survey results for those districts, that do spot-checking on a regular basis, by having no deficiencies found in their districts during the review. It should be noted however, that most districts do not have the resources to spot check every PS&E.

**RECOMMENDATION 2:**

Districts should continue to spot-check Local Agency’s PS&E package for Form FHWA-1273 and other selected Federal contract provisions. Districts should decide which local agencies should be spot-checked based on their past experience with the local agency, the number of Federal-aid projects the local agency has done in the past, and the amount of resources the district can redirect to this effort.

This process review should be repeated again next year to check to see if the issuance of the “boiler plate” LPP and the Local Assistance Procedures Manual, and the spot-checking PS&E packages has helped to reduce the deficiency rate. This review would be on a “post-audit” basis, i.e. conducted on those PS&E packages delivered after the initial “passing” spot-check.

**FINDING #3.**

Several of the local agencies, with deficiencies in the PS&E submittals, were in two areas of the State that were scheduled to have the ITS’s “Contract Administration Core Curriculum” course presented, but, the courses were canceled due to low enrollment (Eastern Riverside/Imperial counties and Ventura/Northwestern Los Angeles counties). The course has been presented at 14 locations around the State within the last year (Eureka, Redding, Marysville, Sacramento, Oakland, Richmond, San Jose, Modesto, Fresno, Santa Maria, Los Angeles (downtown), San Bernardino, Irvine and San Diego). Some of the local agencies contacted, as part of the follow-up, said that they would be interested in attending this course. Also, some said that they did not know the course had been offered in their area.

**OBSERVATION 3:**

When the “boiler plate” LPP is issued, local agencies could end up putting more requirements (provisions) in their contracts than are actually required by FHWA. Not all the provisions are required for all Federal-aid projects. Each provision, and even parts of the provisions, are dependent on whether the project is on or off the National Highway System (NHS), whether the project is on or off a local street (or road) that is functionally classified as a “Federal-aid Highway”, what the cost of the project is, what part of the country the project is located, and what the project is using for construction materials. The ITS’s Contract Administration Core Curriculum course answers these questions and reinforces the procedures that have already been published in LPP 95-07 and subsequent LPPs. The Core Curriculum course was instituted as a interim solution to explain Federal requirements under reengineering, using FHWA’s Contract Administration Core Curriculum text, until such time as the Local Program Procedures Manual is published. Once the manual is published a new series of ITS courses will be provided that will have the same objective as the Core Curriculum but will use the manual as the course text. The Project Development segment of the new series should emphasize the checklist and instructions developed in the “boiler plate” LPP.

**RECOMMENDATION 3:**

The Districts should take an active role in advertising the new ITS Project Development course when it is available. Awareness of Federal requirements, to prevent the loss of Federal-aid funding, should be emphasized. District 7 and District 8 (with help from District 11) should make a special effort in the areas of Eastern Riverside/Imperial counties and Ventura/Northwestern Los Angeles counties.

**FINDING 4.**

Not all the districts and headquarters Local Assistance personnel are aware of all the Federal-aid contracting provisions, requirements, and applicability to the different Federal-aid projects. Questions and comments received from the districts and headquarters Local Assistance personnel during the process review, about the requirements for the different Federal-aid contract provisions, indicate there is a need for training.

**OBSERVATION 4:**

The questions and comments were not coming from those who are new to the Local Assistance program. Some of the questions and comments were coming from those that have been in Local Assistance for over ten years. With the passage of ISTEA many of the rules have changed in how contract provisions are to be applied. Also, FHWA is planning on updating this course to reflect the changes in NEXTEA. Now, not all the provisions are required for all Federal-aid projects. Each provision, and even parts of the provisions, are dependent on whether the project is on or off the National Highway System (NHS), whether the project is on or off a local street (or road) that is functionally classified as a “Federal-aid Highway”, what the cost of the project is, what part of the country the project is located in, and what the project is using for

construction materials. The FHWA Contract Administration Core Curriculum course answers these questions and a lot more. This course text is also updated yearly by FHWA to reflect the latest changes in Federal regulation and policy. A lot of the people who have been around Local Assistance for several years still remember the pre-ISTEA way the Federal-aid contract provisions were required to be applied.

**RECOMMENDATION 4:**

Recommended that all districts and headquarters Local Assistance personnel, involved with Federal-aid project review and approval, should attend the FHWA's Contract Administration Core Curriculum course if they had not attended the course in the last three years.

Attachments

## Process Review 96-01 - PS&E Survey Form

- Form to be submitted to OLP, for local Federal-aid project, off the State Highway, when a local agency submits (or re-submits) Request for Authorization and/or PS&E package for the construction phase of a project.
- OLP Area Engineer cannot process the E-76 if any of the “no” boxes are checked in Part A, B and C. Part D is for information only, checking “no” will not effect E-76 processing.
- Survey begins December 1,1996, and ends January 31, 1997.

Federal-aid Project No. \_\_\_\_\_ Is this a resubmittal yes / no ?  
Local Agency \_\_\_\_\_ Date \_\_\_\_\_

**Part A** (Skip this part if the local agency is not doing all or part of the construction work using force account - day labor.) (If the project is 100% force account skip parts B,C and D.)

Has the Local Agency furnished you with the certification specified **yes** **no**  
in LPP 95-07, Attachment 7, Section 9, “Force Account - Day Labor”  
for their self approval to use that method of construction? .....

**Part B**

Has the form FHWA-1273 been physically incorporated into the contract?.....

Is the Noncollusion Affidavit included in the contract?.....

Is the Lobbying Certification included in the contract?.....

Is the Debarment and Suspension Certification included in the contract?.....

Are Liquidated Damages requirements included in the contract?.....

Does the contract require the contractor to purchase and install iron and/or steel products?  
If yes, answer the next question. If no, go to Part C

Does the contract include the Buy America requirements?.....

**Part C - (go to Part D if the project is not on a Federal-aid highway - see LAPG Chapter 3)**

Have the Federal Minimum Prevailing Wages Rates been physically been incorporated into the contract? .....

**Part D - ( for information only)**

Are there DBE specifications included in the contract? .....

Is there a DBE goal included in the contract? .....

If any of the questions in Part A, B, C or D are checked “no”, then the PS&E package should be returned to the Local Agency to make appropriate corrections.

Date: \_\_\_\_\_

\_\_\_\_\_  
(I have surveyed the above PS&E and am forwarding a copy of this form to OLP as required above)

PR 96-01 Survey Results

<b>Note: Local Agencies' name and number removed so as to not embarrass anyone.</b>												
		Part A		Part B		Part C		Part D		Returned	Total	
District 1	Fed Project #	yes	no	yes	no	yes	no	yes	no			
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no			
District 2		Part A		Part B		Part C		Part D				
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no			
Agency	BRLS-####(026)			6		1		1			1	
District 3		Part A		Part B		Part C		Part D				
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no			
Agency	STPLHG-####(009)			6				1	1		1	
Agency	BRLO-####(002)			6				2			1	
District 4		Part A		Part B		Part C		Part D				
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no			
Agency	STPL-####(001)			6		1		2			1	
Agency	BRLO-####(002)			6		1		2			1	
Agency	STPL-####(005)			6		1		2			1	
Agency	STPLX-####(003)			6		1		2			1	
Agency	STPL-####(006)			6		1		2			1	
Agency	BRLS-####(010)			6		1		2			1	
Agency	STPLH-####(002)			6		1		2			1	
Agency	Project #1			6		1		2			1	
District 5		Part A		Part B		Part C		Part D				
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no			
Agency	STPLH-####(016)			6		1		2			1	
Agency	BRM-####(07)			6		1		2			1	
Agency	ER-2418(003)			5		1		2			1	
Agency	BRLO-####(007)			5		1		2			1	
District 6		Part A		Part B		Part C		Part D				
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no			
Agency	STPLH-####(004)			6		1		2			1	
Agency	CML-####(003)			6		1		2			1	
Agency	STPL-####(001)			6		1		1	1		1	
Agency	STPL-####(003)			5		1		1			1	
District 7		Part A		Part B		Part C		Part D		Returned	Total	
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no			
Agency	STPLX-####(008)			6		1		2			1	
Agency	STPLH-####(005)			6		1		2			1	

PR 96-01 Survey Results

Agency	STPLE-####(001)			5		1		2	1	1	
Agency	STPLE-####(005)			6		1		2			
Agency	STPLN-####(012)			4			1	2		1	1
Agency	STPLN-####(012)			6		1		2			
Agency	ER-2602(071)			5		1		2			1
Agency	STPLH-####(013)		4	2		1		2		1	1
Agency	STPLH-####(013)			6		1		2			
Agency	STPLNG-####(176)			6		1		1			1
Agency	STPLH-####(006)			6		1		2			1
District 8		Part A		Part B		Part C		Part D			
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no		
Agency	STPLG-####(004)			4	2		1	2		1	1
Agency	STPLG-####(004)			6		1		2			
Agency	STPLG-####(054)			6		1		2			1
Agency	CML-####(005)			2	3		1		2	1	1
Agency	STPLE-####(040)			5		1		2			1
Agency	STPLHG-####(007)			6			1	2		1	1
Agency	STPLHG-####(007)			6		1		2			
Agency	STPL-####(003)			4	2		1	2		1	1
Agency	STPL-####(002)			5	1		1	1	1	1	1
Agency	STPL-####(001)			5			1	2		1	1
District 9		Part A		Part B		Part C		Part D			
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no		
District 10		Part A		Part B		Part C		Part D			
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no		
Agency	STPL-####(050)			6		1		2			1
Agency	STPLHG-####(005)			6		1		2			1
Agency	STPLHG-####(003)			6		1		2			1
Agency	STPLHG-####(002)			6		1		2			1
Merced County	BRLO-####(014)			6		1		2			1
District 11		Part A		Part B		Part C		Part D		Returned	
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no		
Agency	STPLHG-#### 1			5	1					1	1
Agency	STPLHG-#### 1			6							
Agency	STPLV-####(030)			6		1		2			1
Agency	STPLHG-####(004)				6		2		2	1	1
District 12		Part A		Part B		Part C		Part D			
Local Agency	Fed Project #	yes	no	yes	no	yes	no	yes	no		

PR 96-01 Survey Results

Agency	BRLO-####(007)	6	1	2				1	
Agency	STPL-####(002)	5	1	2				1	
Total # Returned							11		
Total # LA Doing Force Account/	3								
Total # Local Agencies Surveyed							45	45	